

TO: Joyce M. Grossnickle, Administrative Officer

FROM:

Wendy S. Kearney, Deputy County Attorney *WJ*

DATE:

May 1, 2009

Subject: Improvements to Gas House Pike

Presenter (Name & Title): Wendy S. Kearney, Deputy County Attorney

Requested Date: 6/2/09

Phone: (301) 600-2913

Type of Briefing: (Click box to select)

☐

Administrative Business

☒

Worksession

☐

Closed Session

☐

BOCC/BOE Mtg.

☐

County/Municipal Mtg.

☐

Public Hearing

Board Action Desired:

☒

Decision

☐

Guidance

☐

Information

RECEIVED

MAY - 6 2009

Office of  
Administrative Officer

**Staff Coordination:** This topic has been **thoroughly** coordinated with the following Division/Department Directors, and they will have representatives at the presentation: (click to place a check mark in the appropriate box).

	Staff	Initials	Date	Comments
✓	County Attorney	<i>WJ</i>	5/5/09	
✓	County Manager	<i>WJ</i>	5/6/09	
	Finance Director			
	Budget Officer			
	Fire & Rescue Services Dir.			
	Management Services Director			

	Staff	Initials	Date	Comments
	Permitting & Development Review Director			
	Planning Director			
✓	Public Works Director	<i>WJ</i>	5/5/09	
	Utilities and Solid Waste Management Director			
	Elected Officials			
	Independent Agencies			
	Other			

Attachments:

☒

Yes

☐

No

**PLEASE NOTE:** The **original and 10 copies** of all attachments (including the coordination sheet) are required for the Board of County Commissioners' meetings, which includes the Joint BOCC/BOE Meeting and the County/Municipal Meeting.

If you are scheduled for a **Closed Session**, then you only need to submit the **original and nine (9) copies** of the back-up material. Back-up materials are due to the Administrative Officer **ONE WEEK IN ADVANCE** of the meeting. If materials are not received in a timely manner, you will be asked to reschedule your item.

Date

---

---

---

---

Signature

Date

---

---

---

---

Signature

Date

---

---

---

---

Signature

Date

---

---

---

---

Signature

Date

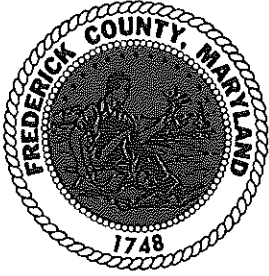
---

---

---

---

Signature



# OFFICE OF THE COUNTY ATTORNEY FREDERICK COUNTY, MARYLAND

Winchester Hall • 12 East Church Street • Frederick, Maryland 21701  
301-600-1030 • FAX: 301-600-1161 • TTY: Use Maryland Relay  
[www.co.frederick.md.us](http://www.co.frederick.md.us)

## COMMISSIONERS

Jan H. Gardner  
*President*

David P. Gray  
*Vice President*

Kai J. Hagen

Charles A. Jenkins

John L. Thompson, Jr.

## COUNTY ATTORNEY

John S. Mathias

## DEPUTY COUNTY ATTORNEY

Wendy S. Kearney

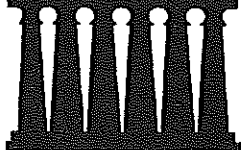
## SENIOR ASSISTANT COUNTY ATTORNEYS

Michael J. Chomel  
Linda B. Thall

## ASSISTANT COUNTY ATTORNEYS

Richard J. McCain  
Kathy L. Mitchell

## **CHARACTER COUNTS!**



JOSEPHSON INSTITUTE OF ETHICS SM

TRUSTWORTHINESS • RESPECT  
RESPONSIBILITY • FAIRNESS  
CARING • CITIZENSHIP

CHARACTER COUNTS! and the Six Pillars of Character are service marks of the CHARACTER COUNTS! Coalition, a project of the Josephson Institute of Ethics.  
[www.charactercounts.org](http://www.charactercounts.org)

## MEMORANDUM

TO: Board of County Commissioners

FROM: Wendy S. Kearney, Deputy County Attorney *WSK*

DATE: May 1, 2009

RE: Improvements to Gas House Pike

ISSUE: Should the Board of County Commissioners approve the attached Resolution and Monocacy Boulevard/Gas House Pike Improvements Agreement and participate in obtaining access to certain property for testing purposes?

BACKGROUND: The City of Frederick has undertaken to design and construct an extension of Shifferstadt Boulevard to connect with Monocacy Boulevard extended, and improvements to Gas House Pike to address safety concerns.

Some of the property that is needed for construction of the above referenced roadway improvements lies outside the corporate limits of the City of Frederick. City of Frederick staff and the Mayor have attempted to negotiate the acquisition of needed property from Mr. George E. Umberger without success. Access to the property to be acquired is needed to conduct testing and studies, and access has been denied.

By letter dated October 7, 2008, and during a worksession on December 4, 2008, Mayor Holtzinger requested the County's assistance in acquiring the needed portions of Mr. Umberger's property, and access to the property for testing, all at the City's expense.

Memorandum to Board of County Commissioners

May 1, 2009

Page -2-

A sample Agreement has been prepared to clarify the roles each entity will undertake.

RECOMMENDATION: The Board should decide whether to 1) execute the agreement; 2) adopt the attached Resolution, and 3) participate in securing a court order to obtain access to the property for testing purposes.

WSK/ksl

Attachment

Monocacy Boulevard/Gas House Pike  
Improvements Agreement

This Agreement made the \_\_\_\_ day of \_\_\_\_\_, 2009, by and between the City of Frederick ("City") and the Board of County Commissioners of Frederick County, Maryland ("County").

Recitals

The City and the County have long recognized the need for the construction of a roadway link along the eastern side of the City to connect the area of Reichs Ford Road and I-70 to Maryland Route 26, and to make safety improvements to Gas House Pike east of the City to the Monocacy River.

The City has undertaken the design of and will construct these roadway improvements both inside and outside the City's corporate limits. Portions of the roadway extension known as Monocacy Boulevard have already been constructed within the City limits.

Portions of the next phase of the project to construct the extension of Shifferstadt Boulevard to Gas House Pike and improvements to Gas House Pike ("the project") will occur in the unincorporated area of the County – outside the City corporate limits. The City has proposed funds for construction of the project in its CIP. Construction of the project will benefit the health, safety, and welfare of City and County citizens.

The City has acquired most of the property needed for the project, but has been unable to reach an agreement with one property owner.

The City has asked the County to assist in acquisition of the needed property (outside of the City corporate limits) by use of its eminent domain powers, if necessary.

Now, therefore, the City and County agree as follows:

1. The recitals set forth above are incorporated herein by reference.

2. The County will participate in gaining access to the property for testing purposes and in the acquisition of property for the project, including but not limited to utilizing its eminent domain power, if necessary.

3. The City will pay all expenses related to the project, including but not limited to, property acquisition, project construction, and all costs of litigation, including attorneys fees.

4. The City will be responsible for the preparation of the documents necessary to initiate the eminent domain action, may retain counsel and expert witnesses, and may negotiate and agree to settle the litigation under such terms as the City deems appropriate, and the County's consent thereto will not be unreasonably withheld.

5. The City will defend and hold the County harmless from all claims in anyway connected to the project and the use of eminent domain powers.

BOARD OF COUNTY COMMISSIONERS  
OF FREDERICK COUNTY, MARYLAND

By: \_\_\_\_\_  
Jan H. Gardner, President

THE CITY OF FREDERICK,  
MARYLAND

By: \_\_\_\_\_  
William J. Holtzinger, Mayor

THE EFFECTIVE DATE OF THIS RESOLUTION IS \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

RESOLUTION OF  
THE BOARD OF COUNTY COMMISSIONERS  
OF FREDERICK COUNTY, MARYLAND

Re: Acquisition of Property for Improvements to Gas House Pike,  
Shifferstadt and Monocacy Boulevards

RECITALS

Both the unincorporated areas in Frederick County ("County") and the incorporated areas of the City of Frederick ("City") have experienced an increase in population and motor vehicle traffic, resulting in the need for improvements to existing roadways and the construction of new roadway links, to alleviate congestion and to protect the health, safety, and welfare of the citizens of the region and the traveling public.

Both Frederick County and Frederick City officials recognize the need to cooperate and coordinate activities relating to improving transportation facilities and the roadway network. Because the City of Frederick is surrounded on all sides by unincorporated areas of Frederick County, numerous roadways cross jurisdictional lines, some more than once along their length.

Frederick County's Comprehensive Plan has, since at least 1984, identified and proposed an arterial roadway along the eastern side of Frederick City to connect the area of Reichs Ford Road and I-70 to Maryland Route 26, with the proposed arterial roadway. The County's 1984 Plan also recognizes as an arterial roadway Gas House Pike from the City limits east to the Monocacy River.

The City of Frederick has undertaken the study and design of improvements to extend Shifferstadt Boulevard to connect with Monocacy Boulevard extended, and design improvements to Gas House Pike to address safety concerns. The plans for improvements to Gas House Pike and new construction to extend Shifferstadt Boulevard and Monocacy Boulevard have been prepared by Fox and Associates, Inc., and Frederick City has proposed funds within its Capital Improvement Program (CIP) to construct the roadway improvements.

The County finds that the design prepared by Fox and Associates, Inc. is the most appropriate alignment for the new roadway segments and the necessary improvements to Gas House Pike, and finds the plans acceptable.

The County recognizes that some of the improvements planned to be constructed by Frederick City will occur on land lying outside of the corporate boundaries of the City of Frederick, and will improve the health, safety and welfare of County residents.

The plats of property prepared by Wilmer Lankford, Maryland Surveyor Number 520, City Surveyor, have identified an aggregate of 190,479 square feet or 4.37 acres± of right-of-way to be acquired in fee simple, 117,973 square feet or 2.71 acres± of perpetual easement area for slope grading, 26,561 square feet or 0.61 acres± of perpetual (or fee) easement area for stormwater management, and 163,264 square feet or 3.75 acres± of revertible temporary easement areas to be utilized during construction.

The City of Frederick has made repeated efforts to negotiate with George E. Umberger to acquire the property needed for the roadway extensions and improvements



described above. The efforts have not succeeded in reaching an agreement, and it appears that an agreement cannot be reached.

### RESOLUTION

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND:

1. It is necessary and in the public interest to extend Shifferstadt Boulevard to connect with Monocacy Boulevard extended, and to construct improvements to Gas House Pike to continue to provide safe vehicular travel along the road for the public.

2. It is necessary and in the public interest to acquire in the aggregate: 190,479 square feet or 4.37 acres± of right-of-way to be acquired in fee simple, 117,973 square feet or 2.71 acres± of perpetual easement area for slope grading, 26,561 square feet or 0.61 acres± of perpetual (or fee) easement area for stormwater management, and 163,264 square feet or 3.75 acres± of revertible temporary easement areas to be utilized during construction, being part of an approximately 120 acre parcel of land owned by George E. Umberger and Mark K. Umberger, to construct an extension of Shifferstadt Boulevard, and to construct improvements to Gas House Pike.

3. The City of Frederick has made every reasonable effort to expeditiously acquire this land by negotiation but has been unable to reach agreement with the owner; however, because the property lies outside the corporate limits of Frederick City, the County will commence condemnation proceedings.

4. The County Attorney is authorized and directed to, in cooperation with the City of Frederick, (which may include utilizing outside counsel employed for such purposes), take appropriate action to bring a condemnation lawsuit on behalf of the County to acquire 190,479 square feet or 4.37 acres± of right-of-way to be acquired in fee simple, 117,973 square feet or 2.71 acres± of perpetual easement area for slope grading, 26,561 square feet or 0.61 acres± of perpetual (or fee) easement area for stormwater management, and 163,264 square feet or 3.75 acres± of revertible temporary easement areas to be utilized during construction under any or all of the County's eminent domain powers including, without limitation, Maryland Constitution Article III and Md. Ann. Code Art. 25, § 11A.

The undersigned hereby certifies that this Resolution was approved and adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF FREDERICK COUNTY, MARYLAND

\_\_\_\_\_  
Ronald A. Hart  
County Manager

BY: \_\_\_\_\_ (SEAL)  
Jan H. Gardner  
President